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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

RED HAT, INC.,

Plaintiff,

v.

VIRTAMOVE CORP.,

Defendant.

Case No. 5:24-cv-04740-PCP

**DEFENDANT VIRTAMOVE'S  
UNOPPOSED ADMINISTRATIVE  
MOTION FOR LEAVE TO FILE A SUR-  
REPLY TO PLAINTIFF RED HAT'S  
REPLY IN SUPPORT OF ITS MOTION  
FOR JURISDICTIONAL DISCOVERY**

Jury Trial Demanded

Judge Hon. P. Casey Pitts  
Location: Courtroom 8, 4th Floor

1 Pursuant to Civil L.R. 7-11, Defendant VirtaMove brings this unopposed administrative  
2 motion to request a short, three-page sur-reply to respond to the reply (Dkt. No. 44) that Plaintiff  
3 Red Hat submitted in support of its motion for jurisdictional discovery. VirtaMove's proposed sur-  
4 reply is attached as Exhibit A to the concurrently-filed Declaration of Amy E. Hayden in Support  
5 of Defendant VirtaMove's Unopposed Administrative Motion for Leave to File a Sur-Reply.

6 Good cause for the requested sur-reply is present here. In support of its motion to dismiss  
7 this case for lack of jurisdiction, VirtaMove employee Susan Cameron submitted two sworn  
8 declarations. Dkt. Nos. 31-1, 42-1. In its reply in support of its motion for jurisdictional discovery,  
9 Red Hat makes the serious allegation that Ms. Cameron's declaration contains falsehoods, but the  
10 evidence VirtaMove submits with its proposed sur-reply (and that Red Hat could have submitted  
11 with its reply—and even its initial motion—but chose not to) shows that is simply not the case.

12 Red Hat counterfactually alleges that Ms. Cameron previously gave deposition testimony  
13 in other cases that contradicts a statement in her declaration indicating that VirtaMove has never  
14 offered to license its patents to anyone. Dkt. No. 44 at 11-12. Red Hat does so by mischaracterizing  
15 and selectively quoting Ms. Cameron's deposition testimony concerning a dispute with a company  
16 called AppFirst, and failing to provide other portions of her deposition testimony to the Court  
17 confirming that the statement in her declaration is in fact true and accurate. Red Hat also ignores  
18 public information, of which its counsel was aware before it filed its reply, confirming that the  
19 AppFirst dispute did not involve VirtaMove's patents (or California) at all, but rather was a  
20 copyright dispute filed against a New-York-based company in the Southern District of New York.  
21 Examination of Ms. Cameron's testimony as a whole, as well as information that is of public  
22 record, confirms that the statement in her declaration is factually accurate. In its proposed sur-  
23 reply, VirtaMove addresses this issue in more detail, and provides supporting evidence, including  
24 additional portions of two of Ms. Cameron's deposition transcripts as well as the publicly-filed  
25 complaint for copyright infringement from the AppFirst matter.

26 Red Hat's reply contains other mischaracterizations, including incorrectly stating a  
27 company with which VirtaMove has worked is a "law firm" (Dkt. No. 44 at 11); it is clear from  
28 Ms. Cameron's deposition transcripts and public records, including that company's website, that

1 it is not. In its proposed sur-reply, VirtaMove again provides relevant portions of Ms. Cameron’s  
2 deposition testimony and public materials relating to this issue. Red Hat also mischaracterizes the  
3 law that applies to the jurisdictional inquiries at issue here, and in particular, for the first time on  
4 reply, how Ms. Cameron’s transcripts and declarations should be analyzed under that law.

5 This Court has the inherent authority to manage its docket and broad discretion to grant  
6 leave for additional briefing. Sur-replies have been granted where, as here, they provide a party  
7 with the opportunity to respond to evidence and argument that could not have been addressed in  
8 its opposition and to facilitate development of a complete record. *See, e.g., Wit v. United*  
9 *Behavioral Health*, No. 14-cv-02346-JCS, 2024 WL 1016069, at \*1 n.1 (N.D. Cal. Feb. 6, 2024)  
10 (granting leave to file a sur-reply to address factual representations made in a reply brief because  
11 “fairness requires that the Court permit Plaintiffs to respond”); *Vizcarra v. Unilever U.S., Inc.*, 339  
12 F.R.D. 530, 537 (N.D. Cal. 2021) (granting leave to file a sur-reply because it “would assist in  
13 resolution of the issues presented in the motions before it,” and the opposing party “has not  
14 identified any prejudice that she would suffer if the Court were to consider [the] sur-reply”). A  
15 short sur-reply is necessary here to give VirtaMove the opportunity to submit all relevant portions  
16 of Ms. Cameron’s prior deposition testimony, the relevant public materials, and otherwise briefly  
17 address the issues that Red Hat raised for the first time in its thirteen-page reply, such that all  
18 relevant evidence and information is before the Court.

19 Moreover, Red Hat does not oppose VirtaMove’s request for leave to file its proposed  
20 three-page sur-reply, as reflected in the attached stipulation. And this modest additional proposed  
21 briefing will not affect any case deadlines, including the hearing on this motion, which is not until  
22 December 12, 2024.

23 VirtaMove respectfully requests that the Court grant VirtaMove leave to file its proposed  
24 three-page sur-reply responding to the reply that Red Hat filed in support of its motion for  
25 jurisdictional discovery.  
26  
27  
28

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Dated: November 14, 2024

Respectfully submitted,

/s/ Amy E. Hayden

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